

MEMORANDUM OF LAW

DATE: March 18, 1994

TO: Bruce Herring, Deputy City Manager

FROM: City Attorney

SUBJECT: COBRA Coverage

You have asked that I respond to a letter from attorney Maureen Summers, who represents the Fireman's Relief Association ("FRA"). In her letter, Ms. Summers indicates that she disagrees with this office's opinion that an employee or his/her dependent must be offered Consolidated Omnibus Budget Reconciliation Act ("COBRA") coverage upon retirement. Ms. Summers does agree that retirement is a "qualifying event" for purposes of COBRA coverage, but disagrees that retirement from the fire service results in a "loss of coverage" such that the retiree must be offered continuation of coverage pursuant to COBRA. Ms. Summers believes that an increase in premium costs is not a change in the terms and conditions of the coverage and that therefore coverage under the post retirement plan offered by the FRA is the same as coverage prior to retirement offered to an active employee.

We have responded to Ms. Summers' position on numerous occasions, both in writing and at meetings. Nevertheless, we have again reviewed our previous opinion, which is attached, and Ms. Summers' subsequent letter, and do not find Ms. Summers' statements sufficiently persuasive to warrant changing our opinion at this time. Ms. Summers offers no legal support for her conclusions. Her conclusions appear to rely on conversations she had with individuals at the Internal Revenue Service ("IRS") and the Department of Health and Human Services ("DHHS"). Ms. Summers indicates that individuals from both departments agreed with her position that COBRA coverage need not be offered to individuals solely as a consequence of a change in premium cost. In an effort to follow up on Ms. Summers' findings, I too, spoke with individuals at the IRS and DHHS. However, I was unable to speak with the same individuals with whom Ms. Summers spoke. After explaining the issues raised by Ms. Summers, I was assured by each of the parties that the extension of COBRA coverage was appropriate under the circumstances.

From the divergence in responses received by Ms. Summers and myself, it is clear that telephone conversations with individuals at governmental agencies may not be reliable sources of legal guidance. For example, responses can vary simply because of the way an issue is presented. Rather, one must look to the written statutory and regulatory guidance provided by the legislative and regulatory bodies charged with the formulation of policy. Such guidance for this COBRA issue is found at 26 C.F.R. section 1.162-26, question and answer 18(e). The regulation demonstrates, by example, that an employee or spouse will "lose coverage" for COBRA purposes when premium requirements change.

Example 2:

Upon the retirement of an employee who, along with the employee's spouse, has been covered under a group health plan, the employee is given identical coverage for life but the spousal coverage will not be continued beyond 6 months unless premiums are then paid by the employee or spouse. The spouse will "lose coverage" 6 months after the employee's retirement when the premium requirement takes effect, so the retirement is a qualifying event and the spouse must be given an opportunity to elect COBRA continuation coverage. (Emphasis added.)

Note that in the example, there is no indication that any of the other terms and conditions of coverage are affected. Specifically, the example does not indicate that the level of services provided by the insurance has changed. It is solely the change in the premium requirement that triggers the qualifying event.

Absent the provision of contrary legal guidance by Ms. Summers, we expect the clarification provided by 26 C.F.R. section 1.162-26 puts to rest this COBRA issue. However, if you have additional questions, please contact me.

JOHN W. WITT, City Attorney

By

Sharon A. Marshall

Deputy City Attorney

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Attachments

cc D. Cruz Gonzalez

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